

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 14659 of 2004(S)

**OA.953/2003 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH**

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PETITIONER: APPLICANT:-

**E.HARRY, S/O.THE LATE IMMANUEL,
ASSISTANT CONSERVATOR OF FORESTS (RETIRED, WILD
LIFE WARDEN, WILD LIFE SANCTUARY, TRIVANDRUM,
RESIDING AT T.C-8/1852, 'SOORYA', THIRUMALA.P.O.,
THIRUVANANTHAPURAM.**

BY ADV. SRI.O.V.RADHAKRISHNAN

RESPONDENTS: RESPONDENTS:-

- 1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF ENVIRONMENT AND FORESTS,
PARIAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110003**
- 2. UNION PUBLIC SERVICE COMMISSION,
REPRESENTED ITS CHAIRMAN, DHOLPUR HOUSE,
SHAJAHAN ROAD, NEW DELHI - 110069.**
- 3. SELECTION COMMITTEE SET UP IN ACCORDANCE
WITH REGULATION 3 OF THE IFS (APPOINTMENT BY
PROMOTION) REGULATIONS 1966, REPRESENTED BY THE
CHAIRMAN OF THE COMMISSION, DHOLPUR HOUSE,
SHAJAHAN ROAD, NEW DELHI - 110069.**
- 4. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM
695 001.**

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5. **PRINCIPAL SECRETARY, FORESTS AND WILD LIFE (F) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
 6. **S.GOPALAKRISHNAN IFS, DEPUTY DIRECTOR, PROJECT TIGER, PERIYAR EAST, THEKKADY.P.O., VIA KUMALI.**
 7. **E.PRADEEP KUMAR IFS, DEPUTY CONSERVATOR OF FORESTS (PROTECTION) FOREST HEAD QUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM.**
 8. **V.V.SHAJI MON IFS, DIVISIONAL FOREST OFFICER, HEMAMBIKA NAGAR.P.O., OLAVAKKODE, PALAKKAD-9.**
 9. **V.V.MOHANAN IFS, DIVISIONAL FOREST OFFICER, CHALAKKUDY FOREST DIVISION, CHALAKKUDY.P.O., THRISSUR DISTRICT.**
 10. **R.RAJENDRAN, ASSISTANT CONSERVATOR OF FORESTS, SOCIAL FORESTRY COMPLEX, ELIARAKKAL, KONNIP.O., PATHANAMTHITTA DISTRICT.**
 11. **P.MURALEEDHARAN NAIR, RETIRED ASSISTANT CONSERVATOR OF FORESTS, RESIDING AT T.C.2/2469-1, SREERANGAM LANE, SASTHAMANGALAM, THIRUVANANTHAPURAM.**
 12. **CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH REPRESENTED BY ITS REGISTRAR, MANAPPATTIPARAMBU, KALOOR, ERNAKULAM DISTRICT.**
- BY ADV. SRI.S.KRISHNAMOORTHY, ADDL.CGSC, FOR R1 TO R3 & R12.**
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
SRI.KRB.KAIMAL (SR.) FOR R11.
SRI.M.R.RAJENDRAN NAIR (SR.) FOR R9.
SRI.M.R.SUDHEENDRAN
SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SMT.VINEETHA B.
GOVERNMENT PLEADER SRI.R.LAKSHMINARAYANAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:-

- P1:** Copy of the OA.No.953/2003 filed before the 12th respondent on 26.11.2003 along with Annexures A1 to A22 dtd.23.11.2003.
- P2:** Copy of the reply statement along with Annexures R11(a) to R11(d) filed by the additional respondent No.11 dated 30.12.2003.
- P3:** Copy of the reply statement along with Annexure R6(a) to R6(d) filed by the 6th respondent dated 28.1.2004.
- P4:** Copy of reply statement filed on behalf of the respondent No.1 dtd.5.2.2004.
- P5:** Copy of the reply statement filed on behalf of the respondent Nos.4 and 5 on 13.2.2004 dtd.12.2.2004.
- P6:** Copy of the rejoinder statement of the petitioner to the reply statement of the respondent No.6 dtd.13.2.2004.
- P7:** Copy of the rejoinder statement of the petitioner to the reply statement filed on behalf of respondent No.1 dtd.13.2.2004.
- P8:** Copy of the rejoinder statement of the petitioner to the reply statement filed on behalf of respondents 4 and 5 dtd.13.2.2004.
- P8(a):** Copy of the Argument Note of the petitioner dtd.10.3.2004.
- P9:** Copy of the Order dtd.15.4.2004 in OA.No.953/2003 of the 12th respondent.
- P10:** Copy of the Order No.17013/09/99/IFS-II dtd.30.6.2000 of the first respondent along with Annexure I.
- P11:** Copy of the Order dtd.26.2.2004 in OA.No.779 of 2000 of the 12th respondent.
- P12:** Copy of the Order dtd.12.8.2003 in OA.No.678/2003 of the 12th respondent.
- P13:** Copy of the Order in IA.No.843 of 2002 dtd.19.8.2004 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.

RESPONDENTS' EXHIBITS:- Nil

(true copy)

P.S. TO JUDGE.

Kvs/-

**K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.**

W.P.(C) NO.14659 of 2004-S

Dated this the 4th day of September, 2007

JUDGMENT

Balakrishnan Nair, J.

The petitioner was a member of the Kerala State Forest Service. He retired from service on 30.9.1999. His efforts to get promotion to Indian Forest Service in or after 1996 but before his retirement, did not succeed. Raising the said grievance, this writ petition is filed. The brief facts of the case necessary for the disposal of this writ petition are the following:

2. The petitioner was recruited as Forest Ranger in 1968 and he was promoted as Asst. Conservator of Forests in 1984. Indisputably he has got confirmation in that cadre with effect from 31.12.1995 and therefore, taking into account his officiating service of more than 8 years, he is entitled to be considered for promotion to the I.F.S. in the vacancy that arose in 1996 and thereafter. Though the petitioner challenged Annexure A13 order attached to Ext.P1 Original Application filed before the Central Administrative Tribunal by which the Government modified the date of confirmation in 1989 to 1995, the said claim was rightly rejected by the Tribunal holding that the same will come within the realm of seniority dispute in the State

Forest Service. The petitioner, also, unsuccessfully challenged Annexures A18 and A22 before the Tribunal. Annexure A18 is the panel of officers prepared and published by the competent authority for promotion to I.F.S. from Kerala Forest Service for various years from 1995-96 to 2002. The petitioner is mainly concerned with the promotions for the years 1996-97 and 1998. He also challenges Annexure A22 annexed to Ext.P1 which is a communication issued by the Central Government to the Chief Secretaries of all States and Principal Chief Conservator of Forests of all States. The petitioner is aggrieved by the direction contained in the said communication that all the vacancies that arose as a result of issuance of Annexure A19 regulations amending I.F.S. Cadre Regulations increasing the cadre strength of I.F.S. Officers to be appointed by promotion need not be filled up in 1998. Upto 31.12.1997 the said cadre strength was 21. With effect from 1.1.1998, by Annexure A19, it was enhanced to 27 for the State of Kerala. By Annexure A22 it was ordered that increased vacancies need be filled up in a phased manner. Permission was granted to fill up only 2 of those vacancies during the year 1998. The said direction contained in Annexure A22 was under challenge before the Tribunal.

3. Ext.P1 is the Original Application filed by the writ petitioner before the Tribunal. Ext.P2 is the reply statement of the 11th respondent.

Ext.P3 is the reply statement of 6th respondent whereas Ext.P4 is the reply statement of the first respondent. Respondents 4 and 5 jointly filed Ext.P5 reply statement. The petitioner filed Exts.P7 and P8 rejoinder statements. The Tribunal heard the matter finally on 8.3.2004 and the O.A. was reserved for orders. He submitted an argument note Ext.P8(a) on 10.3.2004. By Ext.P9 dated 15.4.2004, the Original Application was dismissed.

4. As stated earlier, Annexures A13, A18 and A22 in Ext.P1 were the orders impugned before the Tribunal. As we have mentioned earlier, the Tribunal declined to go into the seniority dispute in the State Service. Therefore, the Tribunal repelled the challenge against Annexure A13. Learned counsel for the petitioner did not press the challenge against Annexure A13 in this writ petition. He submitted that the said Annexure is under challenge before this court in another writ petition.

5. The petitioner attacked Annexure A18 on several grounds. As mentioned earlier, his attack was confined to the selection list of the year 1996-97 and also for the year 1998. the Tribunal noticed that for the year 1996-97 there was only one vacancy for which four officers were enlisted. Though the petitioner came in the zone of consideration, he was not included in the select list because of his juniority among the persons considered. We notice that no serious challenge has been raised in this writ

petition against his non-inclusion for the year 1996-97 during which there was only one vacancy available. The petitioner attacked the 1998 select list mainly based on two grounds. The petitioner firstly, points out that for the year 1998 though two vacancies were available, no select list was prepared, instead two persons wait listed in the year 1996-97 list were appointed. The petitioner contended before the Tribunal that the said procedure is contrary to rules. For every year a panel should be prepared in the light of Annexure A20 amended regulations which came into force from 1.1.1998. The select list or wait list of the previous year could not have been used for filling up of the vacancies for the year 1998 in the light of the above statutory provisions. Learned counsel also relied upon the decision of the Apex Court in **Gujarat State Deputy Executive Engineers Association v. the State of Gujarat and others** (JT 1994 (3) SC 559). This decision and other decisions were cited before the Tribunal also in support of this submission. The Tribunal noticed that as a result of promoting the persons wait listed during the previous year, the applicant was not injured, as the promotees were only his seniors. Learned counsel for the petitioner vehemently attacked this finding. He submitted that if the ineligible persons were removed from the zone of consideration, he would have found a place in

the select list for the year 1998, provided the committee prepared one for the said year. But going by the persons in the zone of consideration for the year 1996-97 and also for the year 1998, we find that seniors of the petitioner were available to be included in the list. Unless the petitioner has a case he was demonstrably superior to his seniors, he would not have been included in the select list even though he may come within the zone of consideration. The wait listed persons were admittedly his seniors, even assuming one of them as contended by the petitioner is ineligible and he is removed from the list, there was another senior Mr. M. Shamsuddin who was eligible to be included for the 1998 list. So, we are of the view that even assuming there is some irregularity in preparing the select list for the year 1998, no prejudice was caused to the writ petitioner. So, we find no reason to interfere with the finding of the Tribunal that no prejudice was caused to the petitioner as only his seniors were considered for appointment for the year 1998.

6. The second ground raised by the petitioner against the select list of 1998 is that all the additionally sanctioned six posts should have been filled up in the year 1998 itself. Then, he would have been definitely included in the list, it is submitted. But the appointing authority went by Annexure A22. If Annexure A22 is followed, there is nothing wrong with the select

list in so far as it considers only two vacancies as available to be filled up for the year 1998. The petitioner attacked Annexure A22 raising the following points. Firstly, it is contended that it was not issued in consultation with the State Government. Secondly, it is submitted that it is only a letter and the same cannot be treated as an executive order issued under Article 77 of the Constitution of India and thirdly, it is pointed out that the said order runs counter to Annexure A19 regulations. Since an executive order cannot vary or annul a statutory regulation, Annexure A22 to the extent it fixes the vacancies as two to be filled up during that year from among the additionally sanctioned six posts, is ultra vires and void, it is submitted.

7. We find that the first contention that the order Annexure A22 was issued without consulting the State Government, is not a point raised in the original application. Therefore, the respondents could not get a chance to comment on that. The Tribunal has also not considered it. So, it can be safely assumed that the said point was not raised before it. The next point that Annexure A22 cannot be treated as an executive order issued under Article 77 of the Constitution of India, is also a point raised for the first time before this court. Therefore, we will not be justified in going into the said ground. The next point urged is that Annexure A22 at best being an

executive order, cannot have the efficacy to vary Annexure A19. Learned counsel for the petitioner further amplified this point by contending that as per Annexure A19 regulations, the cadre strength for appointment by promotion to I.F.S., has been enhanced to 27 but by Annexure A22, the same has been fixed as $21 + 2 = 23$ for the year 1998. Since Annexure A19 regulations were enforced with effect from 1.1.1998, the said reduction of cadre strength under Annexure A22 is ultra vires and therefore void, it is submitted. The Tribunal elaborately considered this point and held that fixation of the cadre strength below the maximum limit would not constitute an alteration or modification of the schedule to the regulations. The Tribunal also noticed that fixation of cadre strength is the exclusive concern of the Central and State Governments and the regulations are made for their convenience and better relationship. In exercise of that power, the maximum limit of the cadre strength has been fixed and they can decide not to fill up all the vacancies available as per the cadre strength. Such a decision as the one contained in Annexure A22, does not alter or modify the cadre regulations, it was held. We are of the view that the said finding arrived at by the Tribunal is based on sound reasoning. Amended regulation 5(1) of Indian Forest Service (Appointment by Promotion) Regulations, 1966 enables the Central Government, in consultation with the

State Government to decide that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Forest Service for promotion. If the Central Government is competent to decide that no vacancy need be filled up, it should definitely be concede power to keep certain vacancies open. In this case, the cadre strength of All India Services of all the States was enhanced with effect from 1.1.1998. Based on the advice of the Ministry of Personnel, Public Grievances and Pensions, it was decided not to fill up all the additional vacancies created as a result of the enhancement of cadre strength in all the All India Services. As part of that, the said decision was made applicable to I.F.S. also. By Annexure A22, the Chief Secretaries of all States and Chief Conservator of Forests of all States were informed of this decision to fill up the additional vacancies arising out of the increase in cadre strength in a phased manner. The said order can, in no way, be stated to be running counter to Annexure A19 regulations. It is always the prerogative of the Government to decide not to fill up all the vacancies available in a cadre. In this case, a policy decision was taken by the Ministry of Personnel, Public Grievances and Pensions in relation to all the All India Services, as evident from the materials on record in this case. So, we concur with the decision of the Tribunal that Annexure

A22 is legal and valid and the decision to fill up only two vacancies in 1998 is in order. So, all the grounds raised against the impugned orders fail.

In the result, the writ petition fails and it is accordingly dismissed.
There will be no order as to costs.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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